APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,774	05/10/2001	Rabindranath Dutta	AUS920010181US1	5095

			EXAMINER
7590	06/25/2004		YIGDALL, MICHAEL J

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ART UNIT	PAPER NUMBER
2122	

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10 May 2001 and 27 July 2001</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-27</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-27</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>10 May 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-27 are pending and have been examined. The priority date considered for the application is May 10, 2001.

Specification

2.   The abstract of the disclosure is objected to because the abstract must not exceed 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4.   Claims 5, 14 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "wherein said feedback..." in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not recite feedback.

Claim 14 recites the limitation "wherein said feedback..." in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim. Claim 10 does not recite feedback.

Claim 23 recites the limitation "wherein said feedback..." in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim. Claim 19 does not recite feedback.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

6.   Claims 1, 3, 4, 10, 12, 13, 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being

unpatentable over U.S. Pat. No. 6,324,692 to Fiske in view of U.S. Pat. No. 6,353,926 to

Parthesarathy et al. (hereinafter "Parthesarathy").

        With respect to claim 1, Fiske discloses a method for processing an upgrade version of a

base application accessed by a user from an application service provider (see the title and

abstract), said base application being accessible at a first network address (see column 4, lines

45-49, which shows the program accessible on the second processor of a server cluster, i.e. at a

first network address), said method comprising:

        (a) installing said upgrade version at a second network address (see step 320 in FIG. 3,

and column 5, lines 15-20, which shows installing the upgrade on the first processor, i.e. at a

second network address).

        Although Fiske discloses testing the state of the upgraded program (see step 360 in FIG.

3, and column 5, lines 24-27), Fiske does not expressly disclose:

        (b) notifying said user that said upgrade version is available for testing.

However, Parthesarathy discloses notifying the user that an update is available (see column 6, lines 11-15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the program upgrading and testing system of Fiske with the notification feature taught by Parthesarathy, for the purpose of automatically notifying the user of an updated version when the application is used (see Parthesarathy, column 2, lines 3-7).

Fiske further discloses:

(c) enabling said user to access said upgrade version at said second address (see column 5, lines 27-29, which shows re-enabling requests to the first processor, i.e. at the second network address, with the upgraded program).

With respect to claim 3, Fiske in view of Parthesarathy further discloses the limitation wherein said notifying is accomplished by effecting a notification screen display on a display device of said user (see Parthesarathy, FIG. 5, which shows an exemplary notification screen).

With respect to claim 4, Fiske in view of Parthesarathy further discloses the limitation wherein said notification is provided in response to a user request for access to said base application (see Parthesarathy, column 10, lines 8-20, which shows providing the notification when the user accesses the application).

With respect to claims 10, 12 and 13, the limitations recited in these claims are analogous to the limitations recited in claims 1, 3 and 4, respectively (therefore, see the explanations provided above). Note that Fiske further discloses a storage medium having program

instructions for enabling processing substantially as recited in claim 10 (see column 6, line 45 to column 7, line 11).

With respect to claims 19, 21 and 22, the limitations recited in these claims are analogous to the limitations recited in claims 1, 3 and 4, respectively (therefore, see the explanations provided above). Note that Fiske further discloses a system having a memory device with program instructions for processing substantially as recited in claim 19 (see column 6, line 45 to column 7, line 11).

7. Claims 2, 5-9, 11, 14-18, 20 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske in view of Parthesarathy as applied to claims 1, 10 and 19 above, respectively, and further in view of U.S. Pat. No. 6,266,788 to Othmer et al. (hereinafter "Othmer").

With respect to claim 2, Fiske in view of Parthesarathy does not expressly disclose receiving feedback from said user regarding said upgrade version.

However, Othmer discloses receiving feedback from users beta testing a new application so that the developer may correct any bugs (see FIG. 2 and column 1, lines 30-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the program updating and testing system of Fiske and Parthesarathy with the feedback feature taught by Othmer, for the purpose of automatically retrieving comments and bug reports from users regarding an updated version of the application.

With respect to claim 5, Fiske in view of Parthesarathy in view of Othmer further discloses the limitation wherein said feedback is in a form of responses to a questionnaire which is caused to be displayed on a display device of said user (see Othmer, column 13, lines 8-36, which shows an exemplary incident report that includes user comments, i.e. in response to a questionnaire displayed for the user).

With respect to claim 6, Fiske in view of Parthesarathy in view of Othmer further discloses migrating said upgrade version to said user in response to said user (see Fiske, steps 370 and 380 in FIG. 3, and column 5, lines 24-33, which shows completing installation on the first processor and migrating the upgrade to the second processor).

With respect to claim 7, Fiske in view of Parthesarathy in view of Othmer further discloses the limitation wherein said migration is accomplished by changing a pointer reference from said first network address to said second network address (see Fiske, step 340 in FIG. 3, and column 5, lines 20-22 and 47-49, which shows the host changing pointer references to the second processor, or during migration, to the first processor, i.e. at the second network address).

With respect to claim 8, Fiske in view of Parthesarathy in view of Othmer further discloses the limitation wherein said first and second network addresses are located at a single network server site (see Fiske, column 3, lines 20-28, which shows that each processor, i.e. at the first and second network addresses, is part of a server cluster; note that the cluster may be located at a single network server site).

With respect to claim 9, Fiske in view of Parthesarathy in view of Othmer further discloses the limitation wherein said first and second network addresses are located at different network server sites (see Fiske, column 3, lines 20-28, which shows that each processor, i.e. at the first and second network addresses, is part of a server cluster; note that the cluster may be distributed among different network server sites, as shown in FIG. 1).

With respect to claims 11 and 14-18, the limitations recited in these claims are analogous to the limitations recited in claims 2 and 5-9, respectively (therefore, see the explanations provided above).

With respect to claims 20 and 23-27, the limitations recited in these claims are analogous to the limitations recited in claims 2 and 5-9, respectively (therefore, see the explanations provided above).

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Pat. No. 6,591,417 to Strysniewicz et al. discloses a method for testing the compatibility of an upgrade. U.S. Pat. No. 6,070,012 to Eitner et al. discloses a method for upgrading software without interrupting service. U.S. Pat. No. 5,359,730 to Marron discloses a method for dynamically updating software. U.S. Pub. No. 2002/0133805 to Pugh et al. discloses an application service provider hosting multiple versions of an application.

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael J. Yigdall whose telephone number is (703) 305-0352.

The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tuan Q. Dam can be reached on (703) 305-4552. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MY

Michael J. Yigdall
Examiner
Art Unit 2122

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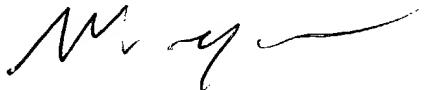
WEI Y. ZHEN
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